

HOUSE BILL No. 1534

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-13-1; IC 8-1-2-5.5; IC 32-23-5-9.

Synopsis: Communications infrastructure. Allows the commissioner of the department of administration (commissioner) to negotiate and enter into lease agreements for the lease of state owned land for the purpose of allowing mobile communications infrastructure to be placed on the land. Provides that such lease agreements must: (1) not be for a term of more than 30 years; and (2) provide for the nonexclusive use of the land by the lessee. Provides that the commissioner may enter into more than one lease agreement with respect to the same parcel of land. Requires the utility regulatory commission (IURC) to adopt rules to establish a program that may be adopted and implemented by energy utilities seeking to enter into co-location agreements with communications service providers. Sets forth certain standards that the program established by the IURC must include. With respect to a conservation easement recorded after June 30, 2009, provides that it is not a breach of the conservation easement for: (1) the holder of the easement; or (2) an owner of an interest in the property subject to the easement; to use or lease a part of the property, not exceeding six acres, for the purpose of placing on the property a transmission tower or other infrastructure used to provide commercial mobile service. Provides that any part of the property used for such purpose: (1) ceases to be subject to the conservation easement; and (2) becomes subject to assessment and taxation for property tax purposes on a basis that reflects the new use of the property.

Effective: Upon passage; July 1, 2009.

Koch

January 16, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1534

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-13-1-4, AS AMENDED BY P.L.1-2006,
2 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 4. The department shall, subject to this chapter,
4 do the following:

5 (1) Execute and administer all appropriations as provided by law,
6 and execute and administer all provisions of law that impose
7 duties and functions upon the executive department of
8 government, including executive investigation of state agencies
9 supported by appropriations and the assembly of all required data
10 and information for the use of the executive department and the
11 legislative department.

12 (2) Supervise and regulate the making of contracts by state
13 agencies.

14 (3) Perform the property management functions required by
15 IC 4-20.5-6.

16 (4) Assign office space and storage space for state agencies in the
17 manner provided by IC 4-20.5-5.



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(5) Maintain and operate the following for state agencies:

(A) Central duplicating.

(B) Printing.

(C) Machine tabulating.

(D) Mailing services.

(E) Centrally available supplemental personnel and other essential supporting services.

The department may require state agencies to use these general services in the interests of economy and efficiency. The general services rotary fund is established through which these services may be rendered to state agencies. The budget agency shall determine the amount for the general services rotary fund.

(6) Control and supervise the acquisition, operation, maintenance, and replacement of state owned vehicles by all state agencies. The department may establish and operate, in the interest of economy and efficiency, a motor vehicle pool, and may finance the pool by a rotary fund. The budget agency shall determine the amount to be deposited in the rotary fund.

(7) Promulgate and enforce rules relative to the travel of officers and employees of all state agencies when engaged in the performance of state business. These rules may allow reimbursement for travel expenses by any of the following methods:

(A) Per diem.

(B) For expenses necessarily and actually incurred.

(C) Any combination of the methods in clauses (A) and (B).

The rules must require the approval of the travel by the commissioner and the head of the officer's or employee's department prior to payment.

(8) Administer IC 4-13.6.

(9) Prescribe the amount and form of certified checks, deposits, or bonds to be submitted in connection with bids and contracts when not otherwise provided for by law.

(10) Rent out, with the approval of the governor, any state property, real or personal:

(A) not needed for public use; or

(B) for the purpose of providing services to the state or employees of the state;

the rental of which is not otherwise provided for or prohibited by law. **Except as provided in section 4.5 of this chapter**, property may not be rented out under this subdivision for a term exceeding ten (10) years at a time. However, **except for property that is**

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leased for a purpose set forth in section 4.5 of this chapter, if property is rented out for a term of more than four (4) years, the commissioner must make a written determination stating the reasons that it is in the best interests of the state to rent property for the longer term. This subdivision does not include the power to grant or issue permits or leases to explore for or take coal, sand, gravel, stone, gas, oil, or other minerals or substances from or under the bed of any of the navigable waters of the state or other lands owned by the state.

(11) Have charge of all central storerooms, supply rooms, and warehouses established and operated by the state and serving more than one (1) agency.

(12) Enter into contracts and issue orders for printing as provided by IC 4-13-4.1.

(13) Sell or dispose of surplus property under IC 5-22-22, or if advantageous, to exchange or trade in the surplus property toward the purchase of other supplies, materials, or equipment, and to make proper adjustments in the accounts and inventory pertaining to the state agencies concerned.

(14) With respect to power, heating, and lighting plants owned, operated, or maintained by any state agency:

(A) inspect;

(B) regulate their operation; and

(C) recommend improvements to those plants to promote economical and efficient operation.

(15) Administer, determine salaries, and determine other personnel matters of the department of correction ombudsman bureau established by IC 4-13-1.2-3.

(16) Adopt rules to establish and implement a "Code Adam" safety protocol as described in IC 4-20.5-6-9.2.

(17) Adopt policies and standards for making state owned property reasonably available to be used free of charge as locations for making motion pictures.

SECTION 2. IC 4-13-1-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.6. (a) As used in this section, "mobile communications infrastructure" means a transmission tower or other infrastructure used to provide commercial mobile service (as defined in 47 U.S.C. 332).**

(b) The commissioner of the department of administration may negotiate and enter into lease agreements for the lease of state owned land for the purpose of allowing mobile communications

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1 infrastructure to be placed on the land. A lease agreement entered
2 into under this section must:

3 (1) not be for a term of more than thirty (30) years; and

4 (2) contain provisions allowing for:

5 (A) the nonexclusive use of the land by the lessee; and

6 (B) the use of the land that is subject to the lease for the
7 placement of additional mobile communications
8 infrastructure by persons other than the lessee.

9 (c) The commissioner may enter into a lease agreement
10 described in subsection (b) with respect to land:

11 (1) that is already subject to another lease agreement under
12 subsection (b); or

13 (2) on which there is already placed mobile communications
14 infrastructure under a lease agreement made under
15 subsection (b);

16 with the same or a different lessee.

17 (d) The commissioner may adopt any rules necessary to
18 implement this section.

19 SECTION 3. IC 8-1-2-5.5 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
21 UPON PASSAGE]: **Sec. 5.5. (a) As used in this section, "co-location
22 agreement" means a contract entered into by an energy utility and
23 a communications service provider under which the energy utility
24 agrees to allow the communications service provider to place
25 communications facilities on the energy utility's electric
26 transmission facilities.**

27 **(b) As used in this section, "communications facilities" means
28 any antennas, equipment, or other infrastructure used to provide
29 communications service.**

30 **(c) As used in this section, "communications service" has the
31 meaning set forth in IC 8-1-32.5-3.**

32 **(d) As used in this section, "communications service provider"
33 has the meaning set forth in IC 8-1-32.5-4.**

34 **(e) As used in this section, "contract revenues" refers to the
35 revenues received by an energy utility under the terms of a
36 co-location agreement.**

37 **(f) As used in this section, "energy utility" has the meaning set
38 forth in IC 8-1-2.5-2.**

39 **(g) Not later than July 1, 2010, the commission shall adopt rules
40 under IC 4-22-2 to establish a program that may be adopted and
41 implemented by energy utilities seeking to enter into co-location
42 agreements with communications service providers. The rules**

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adopted by the commission under this section must establish program standards concerning the following:

(1) A revenue sharing mechanism that provides for the allocation of contract revenues between an energy utility and the energy utility's customers. The mechanism established under this subdivision must ensure that:

(A) the energy utility is able to retain a sufficient part of the contract revenues to:

(i) enable the energy utility to recover the costs associated with making its transmission facilities available to a communications service provider; and

(ii) serve as an incentive to the energy utility to invest the necessary resources to adopt and participate in a co-location program with communications service providers; and

(B) the energy utility's customers are reasonably rewarded for the energy utility's adoption of and participation in a co-location program.

(2) The acquisition of necessary easements or rights-of-way associated with a co-location agreement, including the party responsible for:

(A) negotiating and obtaining any necessary easements or rights-of-way; and

(B) paying the costs associated with any necessary easements or rights-of-way.

(3) Any safety or engineering standards needed to ensure that the placement of communications facilities on an energy utility's transmission facilities will not affect the reliability or safety of the transmission facilities or the reliability of the electric service provided to the energy utility's customers.

(4) Any safeguards or auditing procedures needed to ensure that a co-location agreement entered into by an energy utility and an affiliate of the energy utility is the result of arm's length negotiations and is subject to the commission's rules on affiliate transactions.

(5) Any provisions needed to ensure that proprietary information contained in co-location agreements remains confidential and not subject to public disclosure.

(6) Any other terms and conditions that the commission determines are necessary to provide incentives for energy utilities to adopt the program established under rules, while protecting the interests of the energy utility's customers.

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(h) This section, or any program established by the commission under this section, does not affect:

(1) the rights and duties of any party to a co-location agreement; or

(2) the commission's authority; under section 5 of this chapter.

SECTION 4. IC 32-23-5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) This section applies to a conservation easement that is recorded after June 30, 2009.

(b) Subject to subsection (c), unless specifically prohibited in the instrument creating the conservation easement, it is not a breach of a conservation easement for:

(1) the holder of the conservation easement; or

(2) an owner of an interest in the real property burdened by the conservation easement;

to use or lease a part of the property, not exceeding six (6) acres, that is subject to the conservation easement for the purpose of placing on the property, or allowing to be placed on the property, a transmission tower or other infrastructure used to provide commercial mobile service (as defined in 47 U.S.C. 332).

(c) Any part of any property that is subject to a conservation easement and used or leased as described in subsection (b):

(1) ceases to be subject to the conservation easement as of:

(A) the date of execution of the lease, if applicable; or

(B) the date construction of the transmission tower or other infrastructure begins;

whichever is earlier; and

(2) becomes subject to assessment and taxation under IC 6-1.1 on a basis that reflects the new use of the property.

SECTION 5. An emergency is declared for this act.

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